

Karen L. Willis, J.D.
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February 9, 2018

VIA EMAIL

The Hon. Judge Cathy Seibel
300 Quarropas St., Courtroom 621
White Plains, NY 10601-4150

LETTER MOTION TO INTRODUCE NEWLY DISCOVERED EVIDENCE

Dear Hon. Judge Seibel:

Please see attached newly discovered evidence that the Sixuvus is aware that Can't Stop has **not** abandoned the Village People mark under the Naked License theory. The attached evidence (Ex. 1) is the Sixuvus application for a trademark for live performances under the title "THE KINGS OF DISCO." This conflicts with the Sixuvus testimony to the Court that irreparable harm will befall them if they are unable to continue live performances as Village People. This also conflicts with the Sixuvus testimony that they have performed exclusively as Village People over the past 30 years. However, the trademark application suggest the Sixuvus is claiming to have performed under another mark for the past 30 years. Which is correct? And which is false, the Court should ask. The Sixuvus are in a pickle for which they cannot escape.

This newly discovered evidence suggests there's an alternative remedy of the Sixuvus's own making available under the name "The Kings of Disco," and they are actively preparing to perform under this newly sought trademark. Intervenor believes

the Sixuvus and their counsel had an obligation to inform the court of this alternative remedy. This also suggests the Sixuvus believes that the Village People mark is valid, otherwise they would not be seeking an alternative remedy for live performances as something other than Village People. Essentially, it suggests consciousness of guilt in the context of their Naked License defense.

The Second Circuit held that a plaintiff seeking a preliminary injunction in a copyright case must demonstrate: (1) "either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the plaintiff's favor"; (2) likelihood of "irreparable injury in the absence of an injunction"; (3) "the balance of hardships between the plaintiff and defendant...tips in the plaintiff's favor"; and (4) "that the public interest would not be disserved by the issuance of a preliminary injunction." *Ebay Id.* at 19.

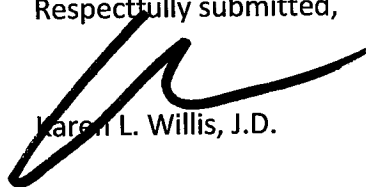
Moreover, under this newly adopted standard, the court cautioned that "courts must not simply presume irreparable harm" even where likelihood of success on the merits is established *Id.* at 20. The Sixuvus application for a trademark for live performances as "The Kings of Disco," is *prima facie* evidence that another remedy is available to the Sixuvus other than injunctive relief, including financial in the context of the "Kings of Disco." Finally, this trademark application by the Sixuvus also suggests that the Sixuvus intend not to continue performing exclusively as Village People. Intervenor could not have discovered this evidence earlier because she was out of town and

engrossed in the temporary injunction hearing. Therefore, Intervenor request the Court take judicial notice of the U.S. Trademark document.

CONCLUSION

The Sixuvus trademark application to perform live shows as "The Kings of Disco" suggest that there is no harm that could occur by the Sixuvus no longer performing as Village People that could not be remedied by the Sixuvus performing as "The Kings of Disco." An alternative remedy of their own choosing. This new evidence should be allowed to show that the Sixuvus has a remedy available to it other than injunctive relief for which they cannot meet the minimum standard.

Respectfully submitted,



Karen L. Willis, J.D.

EXHIBIT 1

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PTO Form 1470 (Rev. 09/2006)
OMB No. 0671-0099 (Exp. 02/28/2018)

Trademark/Service Mark Application, Principal Register

Serial Number: 87581260

Filing Date: 08/23/2017

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	87581260
MARK INFORMATION	
*MARK	THE KINGS OF DISCO
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	THE KINGS OF DISCO
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Sixuvus, Ltd.
*STREET	329 Tecumseh Avenue
*CITY	Mt. Vernon
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants)	10553
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	New York
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	041
*IDENTIFICATION	Entertainment services in the nature of live musical performances; Entertainment services in the nature of live vocal performances by musical group; Live performances by a musical group
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Sarah M. Matz
FIRM NAME	Adelman Matz P.C.
STREET	1173A Second Avenue, Suite 153

CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10065
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EMAIL ADDRESS	sarah@adelmanmatz.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Gary Adelman
CORRESPONDENCE INFORMATION	
NAME	Sarah M. Matz
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STATE	New York
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*EMAIL ADDRESS	sarah@adelmanmatz.com;g@adelmanmatz.com; gpaddocketing@gmail.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEE DUE	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/Sarah M. Matz/
SIGNATORY'S NAME	Sarah M. Matz
SIGNATORY'S POSITION	Attorney of Record, New York bar member
SIGNATORY'S PHONE NUMBER	646-650-2207
DATE SIGNED	08/23/2017

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number.
PTO Form 1478 (Rev. 09/2015)
OMB No. 0551-0008 (Exp. 02/28/2018)

Trademark/Service Mark Application, Principal Register

Serial Number: 87581260

Filing Date: 08/23/2017

To the Commissioner for Trademarks:

MARK: THE KINGS OF DISCO (Standard Characters, see mark)

The literal element of the mark consists of THE KINGS OF DISCO.

The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, Sixxvuv, Ltd., a corporation of New York, having an address of
329 Tecumseh Avenue
Mt. Vernon, New York 10553
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 041: Entertainment services in the nature of live musical performances; Entertainment services in the nature of live vocal performances by musical group; Live performances by a musical group
Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Sarah M. Matz and Gary Adelman of Adelman Matz P.C. 1173A Second Avenue, Suite 153
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United States
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The applicant's current Correspondence Information:

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E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

Basis:

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;

- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
- The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.

To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Sarah M. Matz/ Date: 08/23/2017

Signatory's Name: Sarah M. Matz

Signatory's Position: Attorney of Record, New York bar member

Payment Sale Number: 87581260

Payment Accounting Date: 08/24/2017

Serial Number: 87581260

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THE KINGS OF DISCO